

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DECISION AND ORDER
10-CR-360-A

TERRY STEWART, et al.

Defendants.

This case was referred to Magistrate Judge Jeremiah J. McCarthy for supervision of all pre-trial proceedings. Magistrate Judge McCarthy previously issued multiple Report and Recommendations and Decision and Orders in this matter. In a prior Report and Recommendation, Magistrate Judge McCarthy recommended granting defendants' motion to dismiss the First Racketeering Act of Count 1 of the Indictment and Count 6 of the Indictment on the grounds that the allegations contained in both were unconstitutionally vague. (Dkt. No. 308) This Court issued a Decision and Order adopting that recommendation. (Dkt. No. 352) On November 26, 2013, the Government filed a Fourth Superseding Indictment which contained amendments to Racketeering Acts 1-8 of Count 1 as well as amendments to Counts 6-13 (Transportation of Stolen Merchandise in Interstate or Foreign Commerce). (Dkt. No 357)

Defendants Terry Stewart and Rico Vendetti then filed motions seeking partial dismissal of the Fourth Superseding Indictment. (Dkt. Nos. 364 and 365)

Specifically, they moved to dismiss Racketeering Acts 1-8 and Counts 6-13 as vague and duplicitous and Count 1 for failure to sufficiently allege a criminal enterprise. On March 6, 2014, Magistrate Judge McCarthy issued a Report and Recommendation recommending denial of defendants' partial motion to dismiss the Fourth Superseding Indictment. (Dkt. No. 375)

Defendant Stewart filed objections to the Magistrate Judge's Report and Recommendation. (Dkt. No. 377) The Government filed a response, (Dkt. 378), and defendant submitted a reply, (Dkt. No. 380). Oral argument on the objections was held on May 1, 2014. Following oral argument, the parties were given time to submit additional briefing. The Court considered the matter submitted on May 16, 2014.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review and after reviewing the submissions of the parties and hearing oral argument, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendants' motion for partial dismissal of the Fourth Superseding Indictment is denied. In addition, defendant Stewart's request for a pretrial ruling that any attempt by the Government to offer additional transactions to the jury before the dates set forth in the Racketeering Acts of the

Fourth Superseding Indictment would be an impermissible constructive amendment is denied without prejudice at this time.

The parties shall appear before the Court on June 19, 2014 at 2:00 p.m. for a status conference/meeting to set a trial date.

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: June 18, 2014